

## **PRE-EXISTING CONTRACTS AND OBLIGATIONS:**

### **APPEAL PROCESS ISSUE**

#### **Background**

The RTO Congestion Management Workgroup has agreed on the need for a process for appeal, verification, and resolution of claims in rights conversion. This process applies not only to the conversion of pre-existing contracts but also to assignment of existing rights for load service and inter-RTO utility contracts. In each case there will be an assertion of existing rights to be converted either into FTRs or into rights to auction proceeds. In each case there needs to be a procedure for parties to object and for verification and resolution of the rights.

Two variations of the process have been proposed and debated. The approach in the strawman is more restrictive than the alternative with regard to who has the ability to submit a written protest to the RTO. The strawman requires that a party submitting a protest must be one whose rights might be materially impacted by the proposed conversion. The strawman permits a party not holding rights to submit a request to the RTO to be permitted to file a protest. The strawman defines a specific dispute resolution process, while the alternative references the RTO dispute resolution process. Both agree on the process if no objection is raised.

The two alternatives are presented below as follows:

- 1) Regular font means the terms are common to both the strawman and the alternative.
- 2) Italicized font applies only to the strawman.
- 3) Information within boxes apply only to the alternative.

With the above definitions, the following are the alternative statements:

When a party with load service obligation proposes to convert its LSO rights into FTRs or into a claim on auction revenues, or when parties with an inter-RTO utility contract (PTO to PTO contract) propose to convert it to RTO service and assert a right to FTRs or auction revenues, or when the parties to a PEC reach mutual agreement on a proposal for conversion or modification of a transmission right pursuant to the PEC into FTRs or into a claim on auction revenues, the following process shall be followed:

- a) The relevant TO shall provide notification to RTO-W of the terms and conditions of the proposal.
- b) *The RTO-W shall immediately post the terms and conditions of the assertion of LSO rights or proposed conversion or modification on the RTO-W Website. Such posting shall initiate a twenty-one day period through which the RTO-W, or any party whose rights might be materially impacted by the proposed conversion or modification, may*

*submit written protests to the RTO-W, with an explanation of the basis for the protest and a statement regarding the standing of the party in making the protest. Protests shall be limited to questions of fact as specified in Paragraph \_\_\_\_\_. The proposed conversion or modification shall not take effect during this period; rather, a set of NCR Instructions developed pursuant to Section \_\_\_\_ will be in effect during this period. However, the NCR instructions shall not reduce or otherwise affect the terms of a preexisting contract.*

*A party not holding rights that would be materially impacted by the proposed conversion or modification may request the RTO-W to carry its objection by filing a timely request stating the basis for its objection and a statement regarding the interest of the party filing the request. The RTO-W shall review such requests and make a determination on the merits of the request to file or not to file an objection on behalf of the requesting party.*

Alternative Position

The RTO-W shall immediately post the terms and conditions of the assertion of LSO rights or proposed conversion or modification on the RTO-W Website. Such posting shall initiate a twenty-one day period through which the RTO-W, or any other party, may submit written protests to the RTO-W. The proposed conversion or modification shall not take effect during this period; rather, a set of NCR Instructions developed pursuant to Section \_\_\_\_\_ will be in effect during this period. However, the NCR instructions shall not reduce or otherwise affect the terms of a preexisting contract.

- c) If, by the end of the twenty-one day period, no party objects to the proposed terms and conditions of the conversion or modification, the proposed conversion or modification shall be implemented immediately by the RTO-W, subject only to the party or parties to the conversion obtaining any necessary regulatory authorizations prior to the RTO-W's implementation of the conversion or modification.
- d) *At the end of the twenty-one day period, if any affected party has protested the proposed conversion or modification, the RTO-W shall initiate an open mediation process with the objective of facilitating agreement among all parties that have established standing in the proceeding. The mediation process shall be conducted using the procedures as set forth in Section \_\_\_\_ of the RTO-W Tariff.*

Alternative Position

At the end of the twenty-one day period, if a party has protested the proposed conversion or modification by making a written protest as described in Paragraph b) above, such protest shall be submitted for resolution under the RTO-West dispute resolution process. [Note: the RTO-West dispute resolution process is anticipated to require mediation and arbitration].

- e) *If the RTO-W's mediation process resolves all protests, the mediation shall be deemed successful and the proposed conversion or modification shall be implemented*

*immediately by the RTO-W, subject only to the party or parties to the conversion obtaining any necessary regulatory authorizations prior to the RTO-W's implementation of the conversion or modification.*

- f) *If the mediation process does not resolve all disagreements, the disputing parties may, with the consent of all the parties, initiate the RTO-W's arbitration procedures to resolve the disagreement. If all parties do not consent to the use of ADR,*
- i) *The party or parties to the proposed conversion or modification may file the proposed agreement with the appropriate regulatory authorities.*
  - ii) *Any party with standing, including the RTO-W, may challenge the proposed terms or conditions, consistent with the party's rights to do so, in an appropriate regulatory or judicial forum.*
  - iii) *Pending resolution of the dispute by ADR or a regulatory authority, the proposed conversion or modification shall not take effect, unless a regulatory or judicial authority issues an order to the contrary; rather a set of NCR Instructions developed pursuant to section \_\_\_\_ will be in effect during this period.*

The supporting statement for the strawman has been provided by Chris Reese. The supporting statement for the alternative (alternative 2 below) has been provided by Carl Imparato.

## ATTACHMENTS

### **Alternative 1 (Strawman)**

When a party with load service obligation proposes to convert its LSO rights into FTRs or into a claim on auction revenues, or when parties with an inter-RTO utility contract (PTO to PTO contract) propose to convert it to RTO service and assert a right to FTRs or auction revenues, or when the parties to a PEC reach mutual agreement on a proposal for conversion or modification of a transmission right pursuant to the PEC into FTRs or into a claim on auction revenues, the following process shall be followed:

- a) The relevant TO shall provide notification to RTO-W of the terms and conditions of the proposal.
- b) The RTO-W shall immediately post the terms and conditions of the assertion of LSO rights or proposed conversion or modification on the RTO-W Website. Such posting shall initiate a twenty-one day period through which the RTO-W, or any party whose rights might be materially impacted by the proposed conversion or modification, may submit written protests to the RTO-W, with an explanation of the basis for the protest and a statement regarding the standing of the party in making the protest. Protests shall be limited to questions of fact as specified in Paragraph \_\_\_\_\_. The proposed conversion or modification shall not take effect

during this period; rather, a set of NCR Instructions developed pursuant to Section \_\_\_\_ will be in effect during this period. However, the NCR instructions shall not reduce or otherwise affect the terms of a preexisting contract.

A party not holding rights that would be materially impacted by the proposed conversion or modification may request the RTO-W to carry its objection by filing a timely request stating the basis for its objection and a statement regarding the interest of the party filing the request. The RTO-W shall review such requests and make a determination on the merits of the request to file or not to file an objection on behalf of the requesting party.

- c) If, by the end of the twenty-one day period, no party objects to the proposed terms and conditions of the conversion or modification, the proposed conversion or modification shall be implemented immediately by the RTO-W, subject only to the party or parties to the conversion obtaining any necessary regulatory authorizations prior to the RTO-W's implementation of the conversion or modification.
- d) At the end of the twenty-one day period, if any affected party has protested the proposed conversion or modification, the RTO-W shall initiate an open mediation process with the objective of facilitating agreement among all parties that have established standing in the proceeding. The mediation process shall be conducted using the procedures as set forth in Section \_\_\_\_ of the RTO-W Tariff.
- e) If the RTO-W's mediation process resolves all protests, the mediation shall be deemed successful and the proposed conversion or modification shall be implemented immediately by the RTO-W, subject only to the party or parties to the conversion obtaining any necessary regulatory authorizations prior to the RTO-W's implementation of the conversion or modification.
- f) If the mediation process does not resolve all disagreements, the disputing parties may, with the consent of all the parties, initiate the RTO-W's arbitration procedures to resolve the disagreement. If all parties do not consent to the use of ADR,
  - iv) The party or parties to the proposed conversion or modification may file the proposed agreement with the appropriate regulatory authorities.
  - v) Any party with standing, including the RTO-W, may challenge the proposed terms or conditions, consistent with the party's rights to do so, in an appropriate regulatory or judicial forum.
  - vi) Pending resolution of the dispute by ADR or a regulatory authority, the proposed conversion or modification shall not take effect, unless a regulatory or judicial authority issues an order to the contrary; rather a set of NCR Instructions developed pursuant to section \_\_\_\_ will be in effect during this period.

Pro's:

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There may be some parties that may not want any FTRs on a specific path to be granted to existing contracts. This reduces the ability for parties to game the conversion process by make blanket interventions intended to delay the outcome for the granting of FTRs.

Converting many contracts to a flow-based rights will create the need for a settlements due to the nature of all of the contract terms instead of specific demand capacities. If all parties on a specific flow path agree on the settlement, than that settlement should be used unless the RTO can demonstrate that there is an inappropriate and unjust taking of FTRs.

Since contract rights will be converted to FTRs on multiple affected flowpaths there will be many potential parties that have rights on any particular flowpath, especially on the more controversial and commercial flowpaths.

Con's:

Since the RTO is in a position of neutrality the RTO may not be trusted as an adequate advocate of the non-rights holders interests.

## **Alternative 2**

When a party with load service obligation proposes to convert its LSO rights into FTRs or into a claim on auction revenues, or when parties with an inter-RTO utility contract (PTO to PTO contract) propose to convert it to RTO service and assert a right to FTRs or auction revenues, or when the parties to a PEC reach mutual agreement on a proposal for conversion or modification of a transmission right pursuant to the PEC into FTRs or into a claim on auction revenues, the following process shall be followed:

- a) The relevant TO shall provide notification to RTO-W of the terms and conditions of the proposal.
- b) The RTO-W shall immediately post the terms and conditions of the assertion of LSO rights or proposed conversion or modification on the RTO-W Website. Such posting shall initiate a twenty-one day period through which the RTO-W, or any other party, may submit written protests to the RTO-W. The proposed conversion or modification shall not take effect during this period; rather, a set of NCR Instructions developed pursuant to Section \_\_\_\_\_ will be in effect during this period. However, the NCR instructions shall not reduce or otherwise affect the terms of a preexisting contract.
- c) If, by the end of the twenty-one day period, no party objects to the proposed terms and conditions of the conversion or modification, the proposed conversion or

modification shall be implemented immediately by the RTO-W, subject only to the party or parties to the conversion obtaining any necessary regulatory authorizations prior to the RTO-W's implementation of the conversion or modification.

- d) At the end of the twenty-one day period, if a party has protested the proposed conversion or modification by making a written protest as described in Paragraph b) above, such protest shall be submitted for resolution under the RTO-West dispute resolution process. [Note: the RTO-West dispute resolution process is anticipated to require mediation and arbitration].

For the statement in support of this alternative, please see “Discussion Paper: Preservation of Rights to Protest PEC/LSO Conversions and NCR Instructions,” by Carl Imperato.